

SUBMITTED TO THE  
TRADE POLICY STAFF COMMITTEE  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

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PUBLIC COMMENTS ON POTENTIAL ACTION UNDER  
SECTION 203 OF THE TRADE ACT OF 1974 WITH REGARD TO IMPORTS  
OF CERTAIN STEEL

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Response to Comments on Presidential Action Under  
Section 203 of the Trade Act of 1974 With Regard to Imports of  
Stainless Steel Fittings and Flanges (Product Group 33)

Filed on Behalf of:

The Committee on Pipe and Tube Imports;  
Alloy Stainless Products Co., Inc.;  
Bitrek Corporation, a division of  
Anvil International, Inc.; Capitol Manufacturing  
Company; Ideal Forging Corporation;  
and Maass Flange Corporation

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**EXECUTIVE SUMMARY**

The Trade Policy Staff Committee (the “TPSC”) should recommend to the President that he implement the recommendation of Commissioner Devaney with regard to imports of stainless steel fittings and flanges. The domestic industry has witnessed a surge in imports and profit levels have become virtually nonexistent over the past five years. Most of the major domestic producers of stainless steel fittings and flanges have actively supported relief in this investigation, including testifying during both the injury and remedy hearings. Allegations in opposition to relief that the domestic industry is uninterested in relief and has failed to participate in this investigation thus lack merit.

Commissioner Devaney’s proposed quota remedy would limit imports of stainless steel fittings and flanges to the average quantity of imports from 1996-1998 for a period of four years. This quota remedy would give the domestic industry relief from the recent surge in imports which has destroyed volume, forced plant closures, and reduced the profitability of domestic producers. The quota relief would also permit the domestic industry to implement its adjustment plan to ensure that the domestic industry can compete effectively with imports when the period of relief ends.

3. THE PRESIDENT SHOULD EXERCISE HIS DISCRETION AND ADOPT RELIEF FOR THE DOMESTIC STAINLESS STEEL FITTINGS AND FLANGE INDUSTRY

The TPSC should recommend to the President that he adopt the remedy recommendation of Commissioner Devaney for product group 33, stainless steel fittings and flanges. Comments submitted by foreign producers and others in opposition to relief for this product group misstate the facts and ignore the serious injury that the domestic industry has experienced during recent years.<sup>1</sup> The TPSC should therefore recommend that the President exercise his discretion and adopt the prudent remedy recommendation of Commissioner Devaney of a four year quota using the average quantity of imports from 1996-1998 as the quota limit.

1. The Domestic Stainless Steel Fittings and Flange Industry Is a Small But Vital Domestic Industry

The domestic stainless steel fittings and flange industry is a small but vital part of the domestic steel industry. Stainless steel fittings and flanges are used in a variety of industries including the petrochemical industry, as well as other manufacturing industries that utilize pipe

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<sup>1</sup> This submission is filed in response to comments filed on behalf of the European Stainless Steel Forged Fittings Manufacturers Association; the Association of European Quality Flange Manufacturers; Silbo Industries, Inc.; Gerlin, Inc.; Kanzen Tetsu Sdn, Bhd (“developing countries”); and the Consuming Industries Trade Coalition.

systems to transport corrosive, high temperature, or high pressure substances. During recent years, imports have seized a substantial portion of the domestic market for these products. The few remaining producers have faced considerable downsizing and have lost much if not all of their profitability. If imports continue to gain market share at the same rate as during the past 15 years, the domestic industry will eventually cease to exist and domestic manufacturers and the petrochemical industry will be completely dependent upon imports.

The small size of this industry, as evidenced by the limited number of domestic producers and the total volume of imports in comparison to the other products subject to this investigation, does not make this industry any less deserving of relief. Furthermore, the active participation of only a limited number of domestic producers does not indicate a lack of interest on the part of the domestic industry when relatively few domestic producers exist. In sum, the condition of the domestic industry producing stainless steel fittings and flanges merits an independent examination by the TPSC despite several of the comments filed in opposition to relief. Such an examination will demonstrate that the industry deserves and needs relief from imports in the form of the quota recommended by Commissioner Devaney. Absent relief, the domestic industry will not be able to sustain itself at its current profit levels as imports continue their march towards total domination of the domestic market.

2. The Domestic Industry Has Experienced Serious Injury Due to Imports

Several comments submitted on behalf of foreign producers of stainless steel fittings and flanges contend that the finding by three Commissioners that the domestic industry has been

seriously injured due to a surge in imports has no basis in fact. Yet the data clearly support the finding that the domestic industry has experienced both injury and a surge in imports.

As demonstrated in our comments submitted on January 4, 2002, imports of stainless steel fittings and flanges increased 73.5 percent from 1996-2000. Additionally, profit levels became virtually nonexistent over this same period, falling drastically from 1996 to the first half of 2001. The recent decrease in imports in the first half of 2001 highlighted by foreign producers does not mitigate this surge in imports. While non-NAFTA imports decreased 27 percent between interim 2000 and 2001, the decrease was a temporary result of a 23 percent decrease in consumption coupled with an insignificant 6 percent decrease in importers' large inventories during the same period. Thus, the distributors who import these products already had high volumes of product in inventory when demand levels fell, resulting in their temporarily curtailing imports of fittings and flanges. The domestic industry did not benefit from this temporary decrease in imports, as evidenced by the financial data. The recent decrease in imports thus cannot be interpreted as a sign that the import problem has been mitigated, for imports will undoubtedly return as soon as inventory levels fall and consumption levels increase absent relief in this investigation.

For the domestic stainless steel flange industry, producers of flange forgings need relief from imports of both flange forgings (unfinished flanges) and finished flanges. While foreign producers have attempted to shift the focus of the problem in the domestic stainless steel flange industry to the different positions taken on flange forgings by integrated producers and converters, it is worth noting that both converters and integrated producers support relief for finished flanges.

Thus it is only one HTS number, 7307.21.1000, that is subject to dispute within the domestic industry. Foreign producers' argument that the flange investigation is simply a domestic battle and has "nothing to do with foreign producers" of flanges is therefore misleading.

The domestic converter of flange forgings opposed to all relief on imports of flange forgings, Gerlin, Inc., has also taken the position that Mexico must be included in any relief granted for stainless steel flanges. Most (66 percent) of the imports from Mexico in product group 33 in 2000 were classified under HTS 7307.21.5000, finished flanges. Domestic producer Maass Flange Corporation has a maquiladora in Acuna, Mexico, established under NAFTA's provisions, which produces flanges under this HTS number. Any relief against Mexico in this product group would thus penalize a domestic company which established a maquiladora under NAFTA's guidelines. Accordingly, the President should decline to extend any relief to imports from Canada and Mexico.

For stainless steel forged fittings, the domestic industry responded in December 2001 to the exclusion request filed on behalf of the European Stainless Steel Forged Fittings Manufacturer Association ("ESSFFMA") which contained many of the same arguments presented in their more recent comments to the TPSC. To summarize our earlier response to their exclusion request, there is no basis to the ESSFFMA's assertion that the domestic industry has shown "little (if any)" interest in this 201 investigation. There are a limited number of domestic producers of these products and most of the major domestic producers have participated actively in this 201 investigation, including testifying during both the injury and remedy phases of this investigation and supplying questionnaire responses documenting the financial injury these companies have

sustained. Additionally, these same domestic producers filed an objection to the ESSFFMA's exclusion request, despite allegations to the contrary.

The ESSFFMA's argument that the domestic energy market will suffer if the President restricts imports of stainless steel forged fittings overlooks several important facts about domestic consumption of stainless steel forged fittings. First, domestic producers currently produce to the specifications on the "accepted manufacturer lists" ("AML") because the majority of the domestic demand for stainless steel fittings and flanges is for products on these lists. Furthermore, products made to the AML specifications are also purchased by distributors, who in turn sell the products to consumers in other industries. Therefore, the ESSFFMA's contention that only a few energy producers in the United States require AML products is baseless. Most of the consuming industries in the United States use these products and the domestic industry currently produces them. Additionally, the proposed quota will guarantee that imports of these products will continue to arrive in the United States without penalty. The energy industry will not suffer because of shortages of stainless steel fittings and flanges and drastically increased prices: imports will simply not be able to continue to gain additional market share at the expense of the domestic industry if the quota is implemented.

2. THE PRESIDENT SHOULD ADOPT THE QUOTA RELIEF RECOMMENDED BY COMMISSIONER DEVANEY

Of the three proposed relief recommendations from the Commissioners finding injury to this domestic industry, only the quota recommended by Commissioner Devaney will assist the domestic industry in regaining market share and profitability without excessively penalizing consuming industries within the United States.



The quota remedy proposed by Commissioner Devaney will return import levels to the average quantity of imports from 1996-1998. At these levels, imports had already gained a sizable portion of the domestic market for stainless steel fittings and forgings. This proposed quota will allow countries that have historically produced fittings and flanges for the domestic market to continue to do so without burdening tariffs. The quota will merely limit the import levels that surged in 1999 and 2000 so that domestic producers can regain a small portion of the market share lost to imports. Regaining this lost volume will allow the domestic industry to return to its once profitable levels so that it can make the capital investments necessary to remain competitive in this market. Domestic producers realize that imports supply a large portion of domestic demand for these products, recently as high as 80 percent. Domestic suppliers acknowledge that some imports are necessary to satisfy domestic demand: domestic producers merely wish to regain a small portion of their lost market share so that they can remain competitive and continue to exist.

1.      A Short Supply Request Mechanism Is Appropriate if the President Implements a Hard Quota

The domestic industry agrees that a “short supply” provision is appropriate if the President adopts a hard quota remedy for stainless steel fittings and flanges. Again, it is worth noting that no exclusion request has been presented to date containing a product that the domestic industry currently does not have the ability to produce. But in the event that there is a short supply of a specific product, domestic producers agree that there should be a mechanism to allow for its temporary limited import. The Commerce Department’s regulations for the steel Voluntary

Restraint Agreements are an example of such a mechanism and could be used as a guideline. *See* 19 C.F.R. §§ 357.101-357.111.

While a short supply mechanism is important to ensure that consuming industries are not unduly penalized from import restrictions, such a measure should be utilized sparingly in instances where a product is truly unavailable domestically. Price, if considered at all, should only be a consideration in a short supply mechanism to the extent that the price offered by domestic producers is “not an aberration from prevailing domestic market prices.” *See* 19 C.F.R. § 357.101(g)(3). Otherwise, consideration of price as a factor in the granting of short supply relief without such a standard would open the door for circumvention of the quota.

2. The President Should Apply Article 9.1 of the WTO Agreement on Safeguards to Any Relief Implemented

In commenting to the President on the applicability of its remedy recommendations to developing countries under Article 9.1 of the Safeguards Agreement, the TPSC should note that, under the plain language of Article 9.1, the prohibition against applying safeguard measures only applies to developing countries under limited circumstances:

Safeguard measures shall not be applied against a product originating in a developing country Member ***as long as*** its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.

Article 9.1, Agreement on Safeguards (emphasis added).

The temporal restrictions indicated by the phrase “as long as” in the language of Article 9.1 therefore suggest that implementation of a remedy would require ongoing monitoring during the period of any remedy to ensure that 1) at no time does the exclusion apply to any developing

country if the total import share of all developing countries with less than 3 percent import share does not collectively comprise more than 9 percent of total imports of the product concerned; and 2) at no time is any developing country excluded from the remedy if its import share grows to exceed 3 percent of imports of the product concerned.

To initially calculate the percentage of imports in the domestic market, the period selected should take into account the recent periods of highest imports that were most injurious to the domestic industry, that is, after 1998. If this peak import period is used in calculating market share, several developing WTO Member countries, including India, Malaysia, and the Philippines, would exceed the 3 percent threshold and would not be exempt under the developing country exception.

## **CONCLUSION**

The domestic stainless steel flange and fittings industry has been seriously injured by increased imports, and the relief recommended by Commissioner Devaney is urgently needed to safeguard the domestic stainless steel flange and fittings industry from further serious injury and extinction. The comments submitted to the TPSC in opposition to relief for this product group have supplied no compelling reason why the President should not exercise his discretion and implement the quota remedy recommended by Commissioner Devaney for stainless steel fittings and flanges.

Respectfully submitted,

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